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SENSITIVE

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SUBJECT: THAI UNIONS, LABOR EXPERTS CRITIQUE DRAFT LABOR
RELATIONS ACT

11. (U) Summary: At an October 5 NGO-sponsored roundtable, 12 Thai labor leaders called Thailand's draft revision of the 1975 Labor Relations Act (LRA) a "step backwards" for labor rights in this country. U.S. labor advisers and ILO representatives presented a more balanced view of the LRA draft and urged Thai unions to work constructively on improving it rather than opposing it in full. Both Thai and independent experts agreed, however, that enforcement of existing labor law is slipshod at best, and that the Thai government has largely ignored labor groups' opinions on how to improve the LRA. ILO experts and academics believe that employer exploitation of migrant workers, as well as laborers working for company contractors or sub-contractors, has a significantly negative impact on labor conditions in Thailand. End Summary.

12. (U) At an October 5 roundtable organized by the U.S.-based Solidarity Center (ACILS), Thai labor leaders roundly criticized the draft Labor Relations Act (LRA) now pending approval by the Cabinet of the Royal Thai Government (RTG) before it is to be taken up for consideration by Thailand's parliament. The new LRA is the long-awaited successor to the original LRA of 1975. Having stalled in Cabinet for several years for a variety of reasons, efforts to pass the Act have acquired new urgency as the RTG attempts to demonstrate its commitment to improving labor standards under a prospective U.S.-Thai Free Trade Agreement.

13. (U) In advance of the roundtable, ACILS advisers and top Thai labor lawyers circulated two separate analyses of the LRA draft which compared its provisions to those of the 1975 Act. Leaving aside the issue of enforcement, which labor leaders consider to be lax in Thailand, the analyses generally agreed on areas where the new LRA represented an improvement over existing legislation, areas where it was viewed as falling short, and areas which remained unchanged. These can be summarized as follows:

KEY LRA IMPROVEMENTS COMPARED TO 1975 ACT

14. (U) The draft LRA:

-- Prohibits employers from firing employees for trying to organize a trade union; prohibits employers from locking out employees making demands on behalf of a union; and prohibits other arbitrary or unfair acts against union members without just cause (Section 148(1)(5)). (Comment: This closes a major loophole in current law, which allows employers to terminate workers without cause for "promoting a union" before the union has been registered.)

-- Allows a union with a membership of over 50 percent of the employer's workforce to submit demands on behalf of all employees, even if multiple trade unions exist (Section 30).

-- Prevents an employer or employee from presenting additional evidence to a Labor Court proceeding unless it has first been presented to the Labor Relations Committee (Article 152).

KEY LRA SHORTFALLS COMPARED TO 1975 ACT

15. (U) The draft LRA:

-- Expands the number of business sectors prohibited from engaging in strikes to include: commercial banking, finance and security businesses, private schools and cooperatives.

-- Prohibits outsiders from supporting bargaining activities of employees ('outsiders' being anyone not an employer, employee, member of an employee committee, or legal adviser).

- Allows employees to be a member of only one trade union per workplace, and prohibits them from joining or creating unions across different professions.
- Requires employers and employees to submit unsettled labor disputes to an appointed arbitrator before declaration of a strike (Article 41).
- Requires trade unions to provide a list of members to a registrar once a year, violating union confidentiality.

KEY EXISTING PROBLEMS NOT ADDRESSED BY LRA -----

16. (U) The draft LRA does not address the following issues identified as shortcomings of 1975 Act:

- Civil servants remain prohibited from organizing trade unions.
- Migrant non-Thai laborers and child laborers (age 15-19) are not allowed to organize unions or serve as union officers, despite comprising a significant part of the Thai workforce.
- The Labor Law definition of employees allowed to organize unions excludes household workers, freelance workers and taxi drivers.
- The Minister of Labor has considerable power to appoint members of employees' committees and labor relations promotion committees without transparent criteria.
- The Minister of Labor has considerable power to prohibit strikes in any workplace (Article 63) by claiming potential economic damage or disturbance to the nation's peace.

THAI LABOR LEADERS' STAND: "NO LRA, NO FTA" -----

17. (U) While ACILS facilitators at the roundtable tried to generate constructive debate on required changes to improve the LRA, Thai labor union representatives declared they would rather keep the 1975 Act in place than accept a new, flawed LRA which they believe is being rushed to completion as a pre-condition to a U.S.-Thai FTA. "We would rather scrap the draft LRA and start over from scratch," said the head of the Thai Carbon Black Workers' Union, who argued that the proposed LRA would give legal sanction to employer interference in workers' rights to representation and their right to strike. Somsak Kosaisook, head of the 200,000 member State Enterprise Relations Confederation (SERC), argued that the administration of Prime Minister Thaksin Shinawatra has refused to engage Thai labor unions on the LRA's provisions and is not sympathetic to labor's concerns in general.

18. (SBU) Somsak noted that Ministry of Labor (MOL) officials refused to discuss the draft LRA at a September 28 dialogue between the MOL and Thailand's seven largest labor unions to discuss labor conditions. He said that a forthcoming meeting with the MOL to discuss enforcement of minimum wage law was also unlikely to include the LRA as a discussion topic. He further criticized the prospective FTA as an agreement that would only benefit U.S. corporations and the business interests of the Thai leadership, which he branded as "promoters of globalization and violators of human rights."

19. (SBU) A representative from the International Labor Organization's (ILO) regional Bangkok office urged the Thai labor leaders to continue to lobby their government for improvements to the LRA rather than opposing its consideration outright. "Your strategy is self-defeating," he said, "and you need to get engaged in a consultative dialogue with government and employers to suggest changes." "You've waited 30 years to reach this point," he added, "and if you stop the process entirely, you may have to wait another 30 years." The ILO representative said that while he understood the Thai labor movement remained fractured and weak, it had a responsibility to raise labor complaints in ILO venues, such as the Geneva-based ILO Committee on Freedom of Association, and to file an annual statement with the ILO on the status of collective bargaining and freedom of association in their country.

Legal Experts Cite Failure of Labor Enforcement -----

10. (U) While disagreeing with the absolutist stance of the Thai unions, ILO and academic experts privately concede that labor leaders have reason to be skeptical about the RTG's willingness to take their views into consideration. An alternate LRA draft, proposed by unions and labor NGO's in response to the government's draft, has been largely

ignored. In 2003-04, a series of public hearings was held on the LRA in eight different provinces, organized by the Labor Committee of Parliament with the participation of key labor leaders and MOL officials. The meetings generated much publicity and verbal commitments to cooperate, but no visible progress in amending the LRA draft.

11. (SBU) In separate meetings in September prior to the LRA roundtable, ILO experts told Laboff that the treatment of migrant laborers, especially Burmese migrants, was one of the key labor issues in Thailand not addressed by the LRA. There are between 1 and 2 million migrant workers in Thailand, 80 percent of whom are Burmese, working largely in the fishing, agricultural, textiles and construction industries. Under current law, legal non-Thai migrant workers are allowed to join unions but are not allowed to hold union office nor organize their own unions - a situation that remains unaddressed by the new LRA draft. Thai labor lawyers note that the Federation of Trade Unions of Burma (FTUB) has been struggling to organize Burmese migrants by having them join Thai unions, but is encountering opposition from those unions, as well as from employers, due to the language barrier as well as a perceived difference in interests.

12. (SBU) In another meeting September 20, the Director of the National Labor Management Center, Prof. Lae Dilokvithayarat, told Laboff that the largest problem with the Thai LRA is the failure to enforce its provisions with companies that outsource production to less-supervised contractor or sub-contractor companies. While the Ministry of Labor is committed to treating all employers as the same, there is evidence that production by major firms that is contracted out is subject to far less monitoring. Laboff noted in a September 17-18 visit to the border province of Mae Sot that the contractor and migrant problems are often intertwined, as hundreds of small textile factories employ Burmese workers at wages far below the mandatory minimum of 142 baht per day (USD 3.50) making clothes for larger firms in Bangkok which then apply garment labels before sale in local stores or, in some cases, for export shipment. These provinces, the ILO and legal experts agree, are poorly monitored due to staffing and funding constraints in the Labor Ministry.

13. (SBU) Prof. Lae also said that the LRA's improved protection for union promoters from arbitrary termination would not be fulfilled until the Thai Labor Court reduced the time it took to render decisions and reinstate aggrieved workers. Currently, a worker who files a case of wrongful termination can expect an initial decision from the Labor Relations Committee, on whether it should forward the case to the Labor Court, in about three months. Thereafter, the Labor Court can take from half a year to a full year to render its decision, which can then be appealed by the employer to a higher court before reinstatement is necessary. All told, it is not unusual for court cases to last well over a year if employers seek to pursue all legal avenues. In addition, the now-unemployed worker must bear the cost of his/her transportation to Bangkok to attend court hearings, assuming he/she has found and can afford a lawyer to take on the case. In the meantime, said Prof. Lae, the worker is constantly urged by court officials and employers to accept a compensation package and to drop the case, which happens in a large percentage of situations.

14. (SBU) Comment: Laboff stressed in all private meetings and at the roundtable that the U.S. was not interested in dictating the provisions of Thai labor law, and that the key requirement for FTA labor chapters was to ensure that our trading partners enforced their own laws. Each country is given the flexibility to implement those laws in the manner best suited to its capabilities. Laboff encouraged the Thai labor leaders to continue efforts to engage the RTG over LRA provisions, and to continue their dialogue with the ILO and with NGOs such as ACILS. Labor experts agree that despite enforcement capacity problems, addressing the migrant and contractor labor issues in new legislation would be a significant step toward improving labor standards in Thailand.